

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
GREENVILLE DIVISION**

**BRANDON P. SMITH**

**PETITIONER**

**V.**

**NO. 4:19-CV-122-DMB-JMV**

**STATE OF MISSISSIPPI, et al.**

**RESPONDENTS**

**ORDER**

On June 5, 2020, the Court entered an order denying Brandon Smith's motion for reconsideration of the dismissal of his habeas corpus petition.<sup>1</sup> Doc. #23 at 4–5. On August 11, 2021, Smith electronically filed a notice of appeal. Doc. #24. The notice itself is undated but attached to the notice is an “Inmate Time Sheet” which reflects that it was printed on July 12, 2021. Doc. #24-1.

On November 15, 2021, the Fifth Circuit Court of Appeals issued an order remanding this case for a determination of whether Smith's notice of appeal was timely filed. Doc. #25. The order states that (1) “the final day for filing a timely notice of appeal was Monday, July 6, 2020;” (2) “[a] prisoner's pro se notice of appeal is timely filed if deposited in the institution's internal mail system on or before the last day for filing;” and (3) because the notice of appeal is not dated, “it cannot be determined from the record ... whether [Smith] delivered the notice of appeal to prison officials for mailing on or before July 6, 2020.” *Id.* at 2.

As mentioned above, the exhibit to Smith's notice of appeal indicates that it was printed on July 12, 2021, over one year after Smith's appeal deadline. Because the body of the notice references the exhibit, *see* Doc. #24 at 5, it follows that Smith could not have deposited the notice

---

<sup>1</sup> The Court's order and judgment dismissing Smith's habeas petition was issued December 6, 2019. Docs. #15, #16.

of appeal in the mail before the exhibit was printed. Thus, the Court concludes that Smith's notice of appeal was not deposited in the institution's internal mail system until at least July 12, 2021—well after the appeal deadline of July 6, 2020. The Clerk of Court is **DIRECTED** to return this case to the Fifth Circuit Court of Appeals for further action as it may deem appropriate.

**SO ORDERED**, this 23rd day of November, 2021.

/s/Debra M. Brown  
**UNITED STATES DISTRICT JUDGE**